



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0558]

RIN 1625-AA00

Safety zone; Ohio River, Mile 469.4-470.0; Bellevue, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River, surface to bottom, extending from Ohio River mile 469.4 to mile 470.0. This temporary safety zone is necessary to protect commercial and recreational vessels from fireworks fallout associated with the City of Bellevue Beach Park Concert fireworks display. During the period of enforcement, no vessels may be located within this Coast Guard regulated area and entry into this Coast Guard regulated area is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative.

DATES: This rule is effective from 10 p.m. to 10:45 p.m. on July 13, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0558. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Denise Buckingham, Marine Safety Detachment Cincinnati, Coast Guard; telephone 513-921-9033, e-mail Denise.M.Buckingham@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
USACE	United States Army Corps of Engineers

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was made aware of this fireworks display on June 17, 2013. An NPRM is impracticable in the time remaining before the event. This display presents potential hazards associated with a fireworks display over or on the Ohio River and a safety zone is required to protect persons and property on or near the waterway during the display. Providing notice and comment through the NPRM process would be impracticable as it would delay this rule and the safety measures it provides.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this

rule effective less than 30 days after publication in the Federal Register. Providing a full 30 days notice would be impracticable and would unnecessarily delay the effective date of this rule. Delaying the effective date would also be contrary to public interest since immediate action is necessary to protect persons and property from potential hazards associated with a fireworks display on the Ohio River.

B. Basis and Purpose

A fireworks display is planned to conclude the City of Bellevue Beach Park Concert on July 13, 2013. This display will feature fireworks being launched between miles 469.4 and 470.0 on the Ohio River at Bellevue, Kentucky. The Coast Guard determined that a safety zone is necessary to keep persons and property clear of any potential hazards associated with the launching of fireworks on or over the waterway.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of the rule is to establish a temporary safety zone that provides protection for persons and property, including spectators, commercial and recreational vessels, and others that may be in the area during the noticed display times from the hazards associated with the fireworks display on and over the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing this temporary safety zone from 10 p.m. to 10:45 p.m. on Saturday, July 13, 2013, for the City of Bellevue Beach Park Concert fireworks display. The Coast Guard will enforce the temporary safety zone and may be assisted by other federal, state and local agencies and the Coast Guard Auxiliary. Fireworks will be occurring on the Ohio River between miles 469.4 and 470.0 of the Ohio River at Bellevue, Kentucky. During the period of enforcement, no vessels may be located within this Coast Guard regulated area and entry into this Coast Guard regulated area is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule prohibits vessels from entering into or being located within this Coast Guard regulated area unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative. Based on the location, limited size, and short 45 minute duration of the safety zone, this rule is not a significant regulatory action. Additionally, notice of this safety zone or any changes will be made via broadcast notices to mariners and deviation from this rule may be requested from the COTP and will be considered on a case-by-case basis.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities

during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor between Ohio River miles 469.4 and 470.0 from 10 p.m. to 10:45 p.m. on July 13, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities due to the fact that this safety zone would be activated, and thus subject to enforcement, for only 45 minutes and before the activation of the zone, a broadcast notice to mariners will be issued and will be widely available to users of the river.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for all waters of the Ohio River, surface to bottom, extending from mile 469.4 to 470.0 on the Ohio River at Bellevue, Kentucky. This safety zone is necessary to protect commercial and recreational vessels from fireworks fallout associated with

the City of Bellevue Beach Park Concert fireworks display. During the period of enforcement, no vessels may be located within this Coast Guard regulated area and entry into this Coast Guard regulated area is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T08-0558 to read as follows:

§ 165.T08-0558 Safety Zone; Ohio River, Mile 469.4-470.0, Bellevue, KY.

(a) Location. The following area is the safety zone: all waters of the Ohio River, surface to bottom, from mile 469.4 to mile 470.0 on the Ohio River at Bellevue, Kentucky. These markings are based on the USACE's Ohio River Navigation Charts (Chart 115 June 2010).

(b) Effective Date. This section is effective from 10 p.m. to 10:45 p.m. on July 13, 2013.

(c) Periods of Enforcement. This rule will be in effect for a total of 45 minutes (10 p.m. through 10:45 p.m.) on July 13, 2013. The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into, movement within, or departure from this zone is prohibited unless authorized by

the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into, departure from, or movement within a regulated area must request permission from the Captain of the Port Ohio Valley or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

DATED: June 26, 2013

R. TIMME
Captain, U.S. Coast Guard
Captain of the Port Ohio Valley

[FR Doc. 2013-16613 Filed 07/10/2013 at 8:45 am;

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